IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER No. 125 OF 2006

Shri Vishnu Krishna @ Kisan Gaikwad
& Ors. .. Appellants

Versus

Shri Dnyaneshwar Sopana Gavali & Ors. .. Respondents

...

Mr. G.S. Godbole for the appellants.

Mr. R.V. Govilkar for respondents.

CORAM : D.G. KARNIK, J

DATED : 17th November 2006

P.C.:

1. Heard the Counsel.

2. This appeal by the appellants who are the original plaintiffs is directed against the Judgment and Order dated 18th January 2006 passed by the learned Civil Judge Senior Division, Pune refusing to grant interim injunction restraining construction on the suit property.

3. For the sake of the convenience of the parties are hereinafter referred to by their status in the suit. Defendant nos. 1 to 11 are descendants of Mr. Kisan Gaikwad. The plaintiffs claim that they and defendant nos.1 and 11 formed a joint family and the suit property is the joint family property. By various sale deeds dated 27th September 1961, 8th April 1964 and 16th January 1975, the father of defendant nos.1 to 6 purportedly act as karta of the joint family sold the suit property to the defendant nos.12 to 23 purportingly for legal necessity and repayment of antecedent debts. The present suit has been filed alleging that there was no legal necessity and the sale deeds executed by Bala are not binding on them. The plaintiffs have also claimed partition of the joint family property.

4. In the suit the plaintiffs made an application for interim injunction restraining the defendant nos.12 to 23 from carrying out any construction on the suit property. By the order dated 18.1.2006, the learned Civil Judge rejected the application for injunction. That order is impugned in this appeal.

5 Prima facie, the suit is barred by limitation. The alienations have taken place between 27th September 1961 and 16th January 1975. The present suit has been filed in the year 2005 i.e. after lapse of 30 years. Possession has handed over to the purchaser. Possession amounts to the notice. Registration also amounts to notice. Plaintiffs, therefore, had the notice of alienations. They ought to have filed the suit for setting aside alienation and the partition within 12 years of the alienation. For the period of more than 40 years from first sale see and more than 30 years from the last sale deed the plaintiffs kept quiet and took no action.

6. The sale deed recites that the property was sold for repayment of antecedent debts. Recitals in the sale deed which is more than 30 years old are prima facie admissible as a evidence of existence of antecedents debts. Bala as a Karta therefore had a legal authority of executing the alienating the suit property.

7. In my view, the plaintiffs have not made out strong prima facie case for grant of injunction. The

trial court has rightly rejected the relief of injunction. I see no reason of interference. Hence, the appeal is dismissed summarily.

8. At the request of the learned Counsel for the appellant, the ad-interim order passed by this Court on 21st February 2006 shall remain in force for a period of 6 weeks.

(D.G. KARNIK, J)